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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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DELTON H. CASON

VERSUS

DIAMOND M. DRILLING COMPANY, and
UNION OIL COMPANY OF CALIFORNIA

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BRIEF IN OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA STATE SUPREME COURT

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REASONS FOR DENYING THE WRIT

I

DEFENDANT'S PETITION FOR A WRIT OF CERTIORARI FAILS TO COMPLY WITH U.S. SUPREME COURT RULE 21.1(G) and (H)

United States Supreme Court Rule 21.1 (G) requires a petition for a Writ of Certiorari to contain a concise statement of the case containing the facts material to the consideration of the questions presented. Defendant's petition fails to discuss or even mention a single fact established at trial in support of its contention that the Louisiana First Circuit Court of Appeals' reversal of that part of the judgment of the lower court holding plaintiff contributorily negligent was incorrect.

The United States Supreme Court Rule 21.1 (H) requires a petitioner for a Writ of Certiorari seeking review of the judgment of a state court to specify the stage in the proceedings below at which the federal questions sought to be reviewed were raised, as well as the method or manner of raising them and the way they were passed upon by the court, with specific reference to the places in the record where the matter appears which show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari. A simple examination of defendant's petition reveals that defendant has failed to comply with this jurisdictional requirement as defendant's reference to its application to the Louisiana State Supreme Court for a Writ of Certiorari fails to state any basis for that application, but merely recites that such an application was made.

As defendant has failed to demonstrate that the so-called federal question forming the basis of this appeal was ever raised prior to the petition for a Writ of Certiorari filed with this Court, this Court is without jurisdiction to consider that petition which, in any event, and as plaintiff will demonstrate below, is

absolutely without merit.

II

DEFENDANT'S PETITION FOR A WRIT OF CERTIORARI FAILS TO DEMONSTRATE ANY REASON WHY THE PETITION SHOULD BE GRANTED AND THE DECISIONS BELOW ARE OBVIOUSLY CORRECT AND INVOLVE NO CONFLICT OF OPINION OR OTHER BASIS FOR REVIEW BY THIS COURT

Defendant, DIAMOND M. DRILLING COMPANY, petitions this Court to grant a Writ of Certiorari. To say the least, defendant's petition fails to reveal any reason why it should be granted. Indeed, respondent is in the extraordinary position of being forced to respond to an "argument" which simply does not exist. The face of defendant's petition fails to reveal an even colorable attempt to demonstrate why it should be granted. Defendant, apparently, is arguing that the Louisiana First Circuit Court of Appeals applied an inappropriate standard of review in its evaluation of the lower court's finding that plaintiff was 10% contributorily negligent in causing his own injury. Despite the Court of Appeals' express statement that it was applying a "clearly erroneous" standard of review in its evaluation of the jury's finding of plaintiff's contributory negligence, defendant is apparently willing to argue that it did not do so. The only clear expression of this "agrument" is found in the Conclusion of defendant's petition, where defendant asserts:

> "The First Circuit of Court of Appeal, State of Louisiana, did not adhere to its responsibility under the Admiralty Laws of the United States but in fact, acted as a typical Louisiana Court of Appeal and reversed the findings of fact of the jury as to the plaintiff's contributorily

negligence. It is respectfully submitted that had the First Circuit Court of Appeal, State of Louisiana, acted as an admiralty court under the laws of the United States that it would not have reversed the findings of fact of the jury as to plaintiff's contributorily negligence."

Defendant in its petition not only fails to demonstrate that the jury's finding of contributory negligence was not "clearly erroneous", but actually manages in the course of its petition to avoid mentioning a single fact proven at trial. Unless defendant's bare and unsubstantiated assertion that the Louisiana First Circuit Court of Appeals applied a different standard of review than it said it did is sufficient for this Court to grant plaintiff's petition, that petition should be denied. Since defendant, in its petition, refers neither to any evidence presented at trial or to any juriprudential authority for its position that the Court of Appeals was incorrect in reversing the lower court's finding of plaintiff's contributory negligence, one can only assume that defendant knows full well that there is no legal of factual basis for that position, or that defendant believes that this Court can decide whatever issue may be raised by that petition without reference to either applicable law or to the facts presented at trial.

As a simple reading of the decision of the Louisiana Third Circuit Court of Appeals makes clear, the judgment of the lower court holding plaintiff contributorily negligent was reversed because there was absolutely no evidence in the record to support a finding of contributory negligence. The reason the lower court's finding of contributory negligence was reversed was not, as Defendent asserts in its Petition's Jurisdictional statement, because the appellate court had made "new findings of fact" or because, as defendant has implied in that Petition's Conclusion, because the Court of Appeals "altered or amended" the jury's finding of fact. Rather, the clear basis for the Court of Appeals' reversal of the jury's finding of contributory negligence was the uncontradicted testimony that plaintiff was

merely following orders and performing the work he was instructed to perform at the time he was injured. Under such circumstances a finding of contributory negligence is simply not possible. One need look no further than *Bobb v. Modern Products, Inc.*, 648 F.2d 1051 (5th Cir., 1951) relied on by the Court of Appeals for authority for the proposition that under such circumstances a finding of contributory negligence is not possible and that such a finding is reversible as "clearly erroneous". Defendant, in its petition, fails to distinguish, or even mention, the long line of federal cases holding that a seaman cannot be found to be contributorily negligent when following the direct order of his superiors. See, for example, *Darlington v. National Bulk Carriers*, 157 F.2d 817 (2nd Cir., 1946). The reason for this rule is that:

> "In the maritime field there must be abject obedience to orders from moment seaman enters service until his discharge and this exception of seaman's contract is of singular exception to the 13th Amendment's prohibition against involuntary servitude. U.S.C.A. Cosnt. Amend. 13. *Petition of Den Norske Amerikalinje* A/S, 276 F. Supp. 163, reversed *U.S. Steel Corp. v. Fuhrman*, 407 F.2d 1142, certiorari denied 90 S. Ct. 2162, 398 U.S. 958, 26 L.Ed.2d 542"

The evidence presented at trial was uncontradicted that plaintiff was following orders at the time he was injured. The Court of Appeals, in reversing the lower court's finding of contributory negligence, was not substituting its own interpretation of the evidence presented for the interpretation of that evidence made by the jury. The appellate court made no new findings of fact. It simply recognized that the jury's conclusion of plaintiff's contributory negligence was impossible under the evidence presented. Plaintiff was ordered to do what he was doing. In effect, the jury found plaintiff contributorily negligent for not disobeying the orders of his superior and this conclusion was

clearly erroneous as a matter of law.

Defendant, in support of his argument that the appellate's court's reversal of the trial court's finding of contributory negligence, was incorrect, merely recites that the appellate court did reverse the jury's finding of contributory negligence and then, apparently concludes that this alone (since it cites no other reason for its conclusion) demonstrates the appellate court's supposed erroneous application of an incorrect standard of review - as if a finding of contributory negligence could never be reversed under the correct standard of review. Based upon the evidence presented at trial the Louisiana First Circuit Court of Appeals could only have held at it did.

CONCLUSION

Defendant's petition to this Court for Writ of Certiorari should not be granted since it fails to refer to a single fact established at trial and certainly does not refer to any fact which would support a finding of plaintiff's contributory negligence. Further, defendant fails in its petition to establish that the federal question of the propriety of the standard of review applied by the Louisiana First Circuit Court of Appeals was raised at any time prior to petitioning this Court for a Writ of Certiorari.

Most importantly, defendant absolutely fails to demonstrate in its petition what act or omission imputable to plaintiff could possibly have constituted negligence on his part. Defendant does not and cannot point to a single piece of evidence which would even tend to support the jury's finding of plaintiff's contributory negligence. Neither does the defendant take issue with the reasoning or jurisprudence relied upon by the Louisiana First Circuit Court of Appeals in support of its reversal of the jury's finding of contributory negligence. Instead, defendant simply asserts that the appellate court should have affirmed that jury's finding of contributory negligence without so much as suggesting a single reason why it should have done

so. The law is clear that a seaman cannot be found to be contributorily negligent when acting in obedience to a lawful order of his superiors. Where the uncontradicted testimony was that plaintiff was injured only as a result of his obedience to such orders, the Louisiana First Circuit Court of Appeals was totally correct in reversing the jury's clearly erroneous finding of plaintiff's contributory negligence and defendant's petition should be denied.

Respectfully submitted,
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BY: _____
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CERTIFICATE

I certify that three copies of the foregoing Brief in Opposition to Defendant's Petition for Writ of Certiorari were served upon counsel of record for defendant, DIAMOND M. DRILLING COMPANY, Joseph J. Weigand, Jr., Weigand & Siegrist, P.O. Box 6062, No. 7 Progressive Building, Houma, Louisiana 70361, and counsel of record for defendant, UNION OIL COMPANY OF CALIFORNIA, Randall Theunissen, Allen, Gooch & Bourgeois, P.O. Box 3204, Lafayette, Louisiana 70502, in this matter by depositing same in the United States Post Office properly addressed and with first-class postage prepaid.

Lake Charles, Louisiana, this 19th day of March, 1984.

/s/
WILLIAM B. BAGGETT